

### 0.3. STATE LEGISLATION

#### 03.12: State Constitution – Interpretation, Construction

The School District “may not use Article X, Section 8 of the 1972 Montana Constitution as an excuse not to bargain matters which are bargainable under the Public Employees Collective Bargaining Act.” **ULP #5-77**

“ ‘Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning or definition.’ [Department of Highways vs. Public Employees Craft Council, 165 Mont. 349, 529 P. 2d 785 (1974).]” **ULP #20-78**

#### 03.21: Collective Bargaining for Public Employees Act – Amendments

Amendments effective as of July 1, 1975 place high school and elementary teachers under the Collective Bargaining for Public Employees Act. **UM #1-75**

#### 03.22: Public Employee Relations Act – Interpretation Construction

“[T]he provisions of Section **59-1615 RCM 1947** ... gave continuing protection to those employees, whether supervisory or not, who were recognized prior to the effective date of the Act...[T]his grandfather clause applies to the recognition of the bargaining agent as well as the ratification of existing bargaining agreements.” **ULP #2-73**

“Registered professional engineers and engineers in training” are not public employees under the [Montana Public Employees Collective Bargaining Act] and, therefore, must be excluded from collective bargaining units. **UD #11-76**

“In the construction of a statute, the intention of the legislature is to be pursued. When a general and particular provision is inconsistent, the latter is paramount to the former. A particular intent will control a general intent that is inconsistent with a particular intent (**93-401-16, RCM 1947**).” **ULP #25-76**

“The test [related to the Act’s grandfather clause] developed by the Board of Personnel Appeals is a rational, considered effort by the Board of Personnel Appeals to assure an effective bargaining unit. The test considers the policy of the act, i.e., to remove strife and unrest from bargaining units, as well as some of the factors set forth in section **39-31-202, MCA**, for determining unit composition – the ‘history of collective bargaining’ and the ‘desires of the employees.’ The result accomplished preserves the public policy underlying the

act. We find the Board's approach to be a rational one for determining bargaining unit memberships." **UC #1-77 Montana Supreme Court (1982)**

"An employer may discharge an employee for a good reason, for a poor reason, or for no reason at all, so long as no statutory provisions are violated...." **ULP #12-78**

"Nothing in the Montana act for collective bargaining for public employees requires a union to be the exclusive bargaining representative before it can represent employees whose section **39-31-201** rights have been violated." **ULP #2-79**

"[T]he word 'certification' as used in Section **39-31-206** was not intended by the legislature to include recognition and for that reason the section has nothing to do with uncertified labor organizations which act as exclusive representatives of their membership by virtue of public employer recognition of them as such." **CC #2-81 District Court (1983)**

"[I]t appears that any violation of Section **39-31-401(1) MCA** necessarily will derive from, and be dependent upon whether an independent violation of Section **39-31-401(2) or (5) MCA** is found." **ULP #29-84**

"Regarding the Section **39-31-401 (1) MCA** charge, the question raised is whether there was an independent violation of the teachers' Section **39-31-201 MCA** rights as protected by Section **39-31-401(1) MCA**. There can be no derivative violation of Section **39-31-401(1) MCA** unless a violation of Section **39-31-401 (5) MCA** is found." **ULP #29-84**

"The whole theme of Section 302 is prohibition against employer aid to a union until the circumstances under which it is permitted are identified in Section 302 (c) .... The federal act [NLRA] states what the employer may do; the Montana Act expresses what the employer must do." **ULP #29-84**

See also **ULPs #14-77, #18-78, #20-78, #19-79, #31-79, #5-80, #7-80, and #39-80** and **UD #11-76 District Court (1977 and 1978)**

"This Court and the Board of Personnel Appeals both look to National Labor Relations Board and federal court interpretations of the National Labor Relations Act for guidance in interpreting the equivalent Montana statutes." **ULP #34-82 Montana Supreme Court (1986).**

"The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using Federal Court and National Labor Relations Board (NLRB) precedents as guidelines in interpreting the Montana Collective Bargaining for Public Employees Act as the state act is so similar to the Federal Labor Management Relations Act, *State ex rel. Board of Personnel Appeals*

**vs. District Court**, 183 Mont. 223 (1979), 598 P.2d 1117, 103 LRRM 2297; **Teamsters Local No. 45 vs. State ex rel. Board of Personnel Appeals**, 195 Mont. 272 (1981), 635 P.2d 1310, 110 LRRM 2012; **City of Great Falls vs. Young (Young III)**, 686 P.2d 185 (1984), 119 LRRM 2682.” ULP #14-87. See also ULPs #10-86, #19-86, #17-87, #24-87, #34-87, #12-88, #19-88, #27-88, #4-89, #62-89, #64-89, #67-89, #13-90, #7-91, and #8-92; UD #4-85, #5 -89, #7-89, #16-89, and #23-90; UCs #9-88, #6-89, #4-90, #3-91, and #21-92; DC #16-89; and ULP #17-87 District Court (1989).

“Montana’s Collective Bargaining Act for Public Employees is substantially modeled after the Labor-Management Relations Act, (LMRA). For that reason the Board of Personnel Appeals (BOPA) has turned to the LMRA and to the National Labor Relations Board (NLRB) for precedent in application of the Montana Act. **State Department of Highways v. Public Employees Craft Council**, 529 P.2d 785, (Mont. 1974); **AFSCME Local 2390 v. City of Billings**, 555 P.2d 507, (Mont. 1976); **Forsyth School District No. 4 v. Board of Personnel Appeals and Forsyth Education Association**, 692 P.2d 1261, (Mont. 1985). UD #6-88. See also ULPs #29-84, #10-86, and #19-86; UD #23-90; UCs #6-89 and #3-91; and DC #16-89.

“[A]n independent, as opposed to derivative, violation of **§39-31-401(1), MCA**. . . is established by showing: ‘(1) that employees are engaged in protected activities,’ (citation omitted); (2) that the employer’s conduct tends to “interfere with, restrain, or coerce employees” in those activities, (citation omitted); and (3) that the employer’s conduct is not justified by a legitimate and substantial business reason, (citation omitted).’ **Fun Striders, Inc.**, 6 86 F.2d at 661-662.” ULP #34- 82 Montana Supreme Court (1986).

Montana’s Collective Bargaining for Public Employees Act and the National Labor Relations Act “are dissimilar in their provisions for dues checkoff.” ULP #29-84.

“Related State statutes must now be reviewed to determine if the mandatory negotiability status of transferring employees between pay plans should be tempered or conditioned.” ULP #10-86

“The Board stated in **Forsyth [December 16, 1983]**, ‘We specifically reject, however, the use of public sector cases as precedent in this case for the reason stated below.’ The Board then went on to point out that public sector cases often come to opposite conclusions over the same issues. For that reason the Board elected to give credence to decisions of the National Labor Relations Board under the Labor Management Relations Act and to negate the usefulness of decisions rendered by state courts and boards. This was consistent with long held Board practice.” ULP #29-86.

“[C]ertain language found in the Federal Act [National Labor Relations Act] is absent from the State Act. Those omissions have been noted.” **ULP #17-87.**

“The Board is well aware of NLRB, federal appellate and state court decisions requiring precise language specifically waiving a particular right to bargain before finding a waiver of that particular bargaining right. Those jurisdictions do not interpret general waivers such as zipper clauses as waiving specific bargaining rights. We disagree with this interpretation.” **ULP #17-87.**

“The charges as filed by the Association are moot and further litigation of resolved matters is contrary to public policy and the intent of the Collective Bargaining Act for Public Employees.” **ULP #32-88.**

“Section **39-31-101 MCA** states, ‘In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the State of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.’ A grievance procedure culminating in the final and binding arbitration is one mechanism in the practice and procedure of collective bargaining which allows employer and employees to arrive at friendly adjustment of disputes. This is in agreement with and established by legislative policy.” **ULP #4-89** See also **ULPs #1-87, #12-89, and #20-89.**

### **03.31: Other Legislation – Education**

The Montana Legislature has placed teachers under the Public Employees Collective Bargaining Act, but also provides for individual contracts for teachers. **ULP #20-76**

The nonrenewal of a nontenured teacher’s contract did not constitute a “grievance” subject to the binding decision of an arbitrator under the agreement and was not allowed by the “Professional Negotiations Act for Teachers” then in effect. *Wibaux Education Association v. Wibaux County High School* (1978)

For information related to the “Professional Negotiations Act for Teachers” see **ULP #12-75 and UD #22-75 District Court (1976)**

See also **Ripley v. Flathead Valley Community College (1984)** and **Bridger Education Association v. Carbon County School District No. 2 (1984).**

“Since the enactment of both the Collective Bargaining Act for Public Employees and the Classification and Pay Act, some tension developed concerning the negotiating of wages for organized employees under Section 39-31-305 MCA and the setting of wages for non-organized employees through

classification methodology adopted by the 1975 Legislature.... It is clear that beginning in 1979 an employee who is *within* the Statewide Classification and Pay Plan will have his classification and corresponding grade level, or wage rate, determined by the adopted classification methodology. The employee can appeal his designated classification *within* the classification plan through the established appeal procedure administered by this Board. An employee *within* the Blue Collar Classification and Pay Plan has his classification and pay rate established by the collective bargaining process. Modifications to his classification and/or pay rate is also accomplished through collective bargaining.” **ULP #10-86.**

**03.34: Other State Legislation – Municipal**

See **Great Falls and Raynes v. Johnson (1985)**

**03.341: Other State Legislation – Municipal – Home Rule**

See **Billings Fire Fighters Local 521 v. Billings (1985)**

**03.36: Other State Legislation – Police and Fire**

“Section **7-32-4155 and 7-32-4164, MCA** hereafter referred to as the Metropolitan Police Act, give local government police commissions the jurisdiction and duty to hear charges brought against police officers concerning incompetence, incapacity and misconduct.” **ULP #18-83 District Court (1985)**

**03.4: Conflict between Labor and Other State Legislation**

The Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation for administrative remedies. Original jurisdiction of such claims lies in the District Court. **ULP #24-77 Montana Supreme Court (1981)**

The Montana Public Employees Collective Bargaining Act and the Metropolitan Police Act “do not conflict. They provide for independent procedures with two different purposes.” **ULP #18-83 District Court (1985)**